

FILED

JUN 13 2011

**SECRETARY, BOARD OF
OIL, GAS & MINING**

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**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**In the Matter of the Petition of Genwal
Resources, Inc., for Review of Division
Order 10-A, Crandall Canyon Mine**

MOTION TO STRIKE

Docket No. 2010-026

Cause No. C/015/0032

Genwal Resources, Inc., permittee of the Crandall Canyon Mine (“**Permittee**” or “**Genwal**”), Permit No. C/015/0032, by and through its counsel of record, respectfully Moves to Strike Exhibit B submitted by the Division of Oil, Gas and Mining’s (the “**Division**”) in support of its Response To Genwal’s Motion To Continue Evidentiary Hearing And Motion To Modify Division Order 10A. Data contained in Exhibit B are inadmissible in this matter without Genwal’s consent because Genwal and the Division agreed to hold all statements and facts adduced as a result of settlement negotiations in confidence.

ARGUMENT

I. THE SUPPLEMENTAL REPORT IS INADMISSIBLE BECAUSE IT PUBLISHES AND ANALYZES DATA PROVIDED BY GENWAL DURING SETTLEMENT NEGOTIATIONS

Under the Rules of Evidence statements and conduct made in the course of settlement negotiations are inadmissible when negotiations fail and litigation continues. Utah R. Evid. 408. While not always binding in administrative adjudications, this Board uses the Utah Rules of Evidence as “appropriate guides” to the degree that are applicable and useful. Utah Admin. Code R641-108-200 (2010). In this matter, it is appropriate for the Board to exclude evidence under Rule 408 because Genwal provided the information to the Division, in settlement negotiations, pursuant to a written agreement that such information would not find its way into subsequent adversarial proceedings. *See* Stipulation Regarding Use of Statements and Facts Adduced as a Result of Settlement Negotiations, Docket No. 2010-026 (Mar. 15, 2011) (attached hereto as Exhibit A).


In the course of settlement negotiations Genwal and the Division agreed to acquire additional water quality data by sampling the disputed mine discharge on a much more frequent schedule than required by either the Coal Rules or Division Order 10A. Accordingly, water from the mine has been sampled and analyzed weekly since early March, with the data provided to the Division in confidence during negotiations. The parties orally agreed, in addition, that this data would not be uploaded to the Division’s public water quality database. Unknown to Genwal and without its consent, the Division incorporated this data into its “Crandall Canyon Mine Hydrologic Evaluation Update” of June 2, 2011. The Division has now submitted that report to

the Board as Exhibit B to its Response and Motion filed earlier today. Disclosure to the Board is improper because these statements and facts were adduced entirely within the context of settlement negotiations, and agreed in writing to be protected for that purpose. Accordingly, Genwal moves to strike Exhibit B to the Division's Response and Motion, and requests that the Board order it removed from the record and not considered in any way in this matter.

CONCLUSION

Because its use as evidence in this proceeding is barred by the Parties' agreement, and by Rule 408 of the Rules of Evidence, Genwal respectfully requests that Exhibit B to the Divisions Response and Motion, described above, be struck from the record in this matter.

Respectfully submitted this 9th day of June, 2011.

BY: 
ATTORNEYS FOR GENWAL RESOURCES, INC.
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Denise A. Dragoo
James P. Allen
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Kevin N. Anderson
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **MOTION TO STRIKE**
via email
were ~~hand~~ delivered on June *9th*, 2011, to the following:
^

Steve Alder, Esq.
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Exhibit A

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**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the Petition of Genwal
Resources, Inc. for Review of Division
Order DO10A, Crandall Canyon Mine

**STIPULATION
REGARDING USE OF STATEMENTS
AND FACTS ADDUCED AS A RESULT
OF SETTLEMENT NEGOTIATIONS**

Docket No. 2010-026

Cause No. C/015/0032

Pursuant to an Order by the Board of Oil, Gas & Mining (the “**Board**”), the Utah Division of Oil, Gas and Mining (the “**Division**”) and Petitioner Genwal Resources, Inc. (“**Genwal**”) agree to entering into discussions for the purpose of resolving the dispute that is the subject of this Request for Agency Action. In order to provide for frank and open discussions that most productive of a settlement without limiting the protections offered by an evidentiary hearing in the event settlement is not reached, the Parties through their respective counsel hereby Stipulate that evidence of conduct or statements made in the compromise negotiations will be protected pursuant to Rule 408 of the Utah Rules of Evidence

and not be admissible in any subsequent proceedings regarding this dispute, except as provided for in that rule.

The foregoing Stipulation is approved by signature of counsel as of the date shown.

Dated: _____

GENWAL RESOURCES, INC.

BY: _____

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Dated: _____

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